As a preliminary, there was in the agreement no undertaking by the defendants to work the Ayer Itam mine. When tin restriction came into force, had the circumstances been different, the defendants might have closed down Ayer Itam, and raised their quota allowance of tin-ore from their own properties. What remedy would Mr. Corbett have had in such event? As far as I can see, none. Had the defendants not grouped, but had worked Ayer Itam as an individual mine, they would have been restricted to the production allowed by the Ayer Itam quota for the time being. I fully appreciate Mr. Corbett's point of view. In effect he says:—

"That would not have mattered to me, as whatever were the profits or loss, at the end of the 2½ years, the capital expenditure would have been written off, and thereafter I should have had 15 per cent. of the profits, and there would be 8,792 more pikuls of ore remaining in the Ayer Itam property than there is to-day, on which I should get my 15 per cent. of the net profits."

Can it be said that the result of the Tin Restriction Enactment was to affect the agreement to such an extent as to render it impossible of performance? I do not think so. Apart from the grouping question, the only effect of the Enactment would have been that, by reason of restriction, the profits on Ayer Itam might have been less.

When the Enactment came into force, the only portion of the contract remaining to be performed, was the payment by the company to Mr. Corbett of 15 per cent. of the net profits. Neither party is asking for the contract to be set aside; Mr. Corbett is, on the contrary, strongly endeavouring to support it, maintaining that the defendants' action in grouping was a breach of contract.

I am satisfied that the defendants committed no breach of the agreement by their action in obtaining permission to group. Nor is the plaintiff entitled to any relief in equity, in respect of the grouping.

The plaintiff does not claim in tort; but relies on a breach of contract.

The action of the defendants in grouping may have caused loss to the plaintiff; but there are many cases of *damnum absque injuria*. There has been no invasion of the plaintiff's rights. All that the defendants did was to avail themselves of a lawful right given to them by Enactment. This they did, as was their duty, in the interest of their share-holders. I can find no ground for the suggestion that Mr. Corbett was entitled to be consulted before the defendants exercised this right.

I therefore hold that the declaration sought in prayer (3) of the plaint, must be refused.

[24] [24] To summarise: I hold:—

1. That on the proper construction of the agreement, (as I have already indicated) the "writing-off" of the expenditure mentioned in clause 3(a), (b) and (c) must be done in three definite cuts, and in the proportions mentioned (but as varied by consent); namely as to the two-fifths at the end of the first year; one-fifth for the next six months, and two-fifths at the end of the next year, from the date when the dredge started to work, viz. from 3rd August, 1931, so that at the end of 2½ years from 3rd August, 1931, the accounts between the plaintiff and the defendants shall be clear of the capital expenditure specified in clause 3(a), (b) and (c).

2. That thereafter, the plaintiff shall be entitled to 15 per cent. of the net profits derived by the company from working the properties in question, the net profits being ascertained by deducting from the gross receipts, the expenditure incurred in working the said properties, and disposal of the tin obtained therefrom as provided in clause 3(d). The accounts to be made up on this basis to the 31st March in each year.

3. I hold that under clause 4 of the agreement (as now varied by mutual consent) the defendants must furnish the plaintiff with statements of account at the end of each financial year, and in particular, order that they supply a statement to 31st March, 1935, which, so far, the defendants have failed to do, although requested.

4. With regard to the construction of clause 5 of the agreement; it has (as I have already stated) been agreed by counsel for the parties that "on account" means on account of the 15 per cent. of the net profits.

5. With regard to clause 7 of the agreement, as already indicated, I order the defendants to furnish the plaintiff with a statement each month showing the amount of profits that are being earned.

6. As I have already held, the defendants were not entitled to deduct English Income Tax from the amounts payable to the plaintiff under clause 5 of the agreement, and the plaintiff is entitled to judgment for the dollar equivalent of £375 and interest at 8 per cent. per annum until payment in respect of prayer (2) of the plaint. It follows that in future, the plaintiff is entitled to the 15 per cent. of the net profits without deduction of English Income Tax.

7. I refuse the declaration sought in prayer (3) of the plaint, as regards grouping.

8. As regards prayers (4) and (5) of the plaint which ask for an account of the net profits under clause (3) of the agreement, it is obvious that the statements of account will have to be entirely reorganised on the basis indicated in (1) of this summary which will show the net profits on which the plaintiff is entitled to 15 per cent. I order that these statements of account be furnished by the defendants, and that the date from which the profits are to be ascertained shall be from 3rd August, 1931, but made up to the 31st March in each year.

9. Costs. Although, in the main, the plaintiff has succeeded throughout his claim; he has failed on two points, viz. on the question of grouping and in the matter of the expenditure on the dredge. I therefore reserve the question of costs for further argument.

20th August, 1935: — By a joint letter dated 16th August, 1935, Messrs. L. T. Williams and H. Rodway Rix, solicitors for the plaintiff and defendants respectively have intimated that they are prepared to accept my suggested proportionate division of the costs.

I therefore order that the defendants do pay the plaintiff seven-eighth (7/8) of the taxed costs.

Costs to be on the higher scale, and I certify for two counsels on both sides.

A. G. DOBB v. PUBLIC PROSECUTOR

[A. Cr. J. (Mudie J.) September 12, 1934]

[Seremban Magistrate's Criminal Appeal No. 17 of 1934]

Motor car — Vehicle licensed outside the F.M.S. — Exemption from being licensed in the F.M.S. — Motor Vehicles Enactment, No. 3 of 1928, ss.5, 13, 44(i).

Section 5(i) of the Motor Vehicles Enactment No. 3 of 1928 which requires every motor vehicle or carriage used to be licensed under the Enactment does not apply to any vehicle registered or licensed under any law relating to motor vehicles or carriages in the Colony so long as such registration remains in force.

Farr for the appellant.

Ma'arof (D.P.O.) for the respondent.

Cur. Adv. Vult.

Mudie J.: The appellant is a resident of Singapore. He is the owner of a motor-car which is registered in Singapore and bears the registration number S. 5813.

[25] [25] On the 16th of July he was driving to Kuala Lumpur. As he was passing through Seremban he was stopped by the police, and was told that his licence had expired at the end of June.

In the Federated Malay States annual licences are issued for motor vehicles under section 5 of the Motor Vehicles Enactment, 1928. In the Colony a different system prevails. Motor-cars are registered under section 4 of Ordinance No. 129 (Traction Engines and Motor Cars). Such registration is not renewed annually. It remains in force until it is cancelled under the Rules under the Ordinance.

In the Colony an annual tax is payable on motor-cars under section 80 of Ordinance No. 135 (Municipal). It is payable in advance at the Municipal Office by two equal instalments in the months of January and July.

In the Federated Malay States the licence is carried on the car in a conspicuous position near the wind-screen. In the Colony the receipt for the Municipal tax is carried in a similar position.

The appellant had paid his tax to the end of June. The instalment for the second half of the year was payable any time in July.

The Lance Corporal who stopped the car apparently thought the receipt for the tax was a licence, and that it had expired on the 30th of June.

The appellant was taken to the Police Court, where he was charged under section 44(i) of the Motor Vehicles Enactment, 1928, with using on a public thoroughfare a motor-car, S. 5813, without being licensed.

The learned Magistrate held that the licence carried by the car expired on the 30th of June. The appellant was convicted and fined $5.

He now appeals.

Section 13 of the Motor Vehicles Enactment, 1928, provides that a motor vehicle which is registered in the Colony may be used on the public thoroughfares of the Federated Malay States so long as such registration remains in force, without being licensed under this Enactment.

The appellant's car is registered in the Colony. The appellant now tenders the certificate of registration in evidence. The learned Deputy very properly makes no objection. It is not disputed that the registration is still in force. He is entitled, therefore, under the provisions of this section to use the car on the thoroughfares of the Federated Malay States without a licence.

The question of the Municipal tax is immaterial, though it appears in any case that he is not in arrears.

As the car is registered in the Colony, no offence has been committed.

The appeal will be allowed. The conviction will be quashed, and the sentence annulled.

Appeal allowed. Conviction quashed.

PHILIP HOALIM v. PUBLIC PROSECUTOR

[A. Cr. J. (Cussen J.) September 30, 1935]

[Negri Sembilan Criminal Appeals Nos. 17, 18 and 19 of 1935]

The Criminal Procedure Code, 1926, s.302 — Plea of guilty — Conviction — Sentence — Appeal.

Where an accused person has been convicted by a Magistrate on the strength of his own plea he is prohibited by section 302 of the Criminal Procedure Code, 1926, from appealing against the legality of the conviction. He can only appeal as to the extent or legality of the sentence.

S. C. Goho for the appellant.

H. C. Willan (Deputy Legal Adviser) for the respondent.

The appellant was charged with offences under section 44(i), Motor Vehicles Enactment, 1928, section 186, Penal Code and section 353, Penal Code alleged to have been committed on the 16th July, 1935. He pleaded guilty to all the charges and was convicted on his pleas. In fact the appellant's motor-car was licensed to run on the road till the 31st July, 1935 — see section 80 of the Colony Municipal Ordinance No. 135; also the motor-car was properly registered. Therefore section 13, Motor Vehicles Enactment, 1929, applies and appellant did not commit any offence.

I take the preliminary objection that appellant is precluded from appealing against his conviction because he pleaded guilty — see section 302, Criminal Procedure Code, 1926. Appellant can only appeal as to the extent or legality of the sentence. *Empress* v. *Ja'far,* I.L.R. 5 Bom. 67; *King-Emperor* v. *Nga Lu* Gale, I.L.R. 5 Rang. 710; *Hayata* v. *Emperor,* A.I.R. 917 Lah. 413; *Emperor* v. *Akub Ali,* A.I.R. 1920 Cal. 522.

S. C. Goho in reply on the preliminary point: An accused who pleads guilty to a charge which states no offence can appeal against his conviction — *Municipal Commissioners* v. *Chuah Seng,* 3 Kyshe 149; *Chunilal Hargovan* v. *Emperor,* A.I.R. 1927 Bom. 67. Also see judgment of Avory J. in *R.* v. *Forde,* [1923] 2 K.B. 403.

H. C. Willan in further reply: *Municipal Commissioners* v. *Chuah Seng, supra,* is not against me because in that case appellant had [26] been convicted [26] of an offence not known to the law. *Chunilal Hargovan* v. *Emperor, supra,* is distinguishable because there the appellant was convicted by a Second Class Magistrate. *R.* v. *Forde, supra,* had no application here.

Cussen J. delivered an oral judgment dismissing the appeal against the conviction on the preliminary objection taken.

Appeal dismissed.